BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

ROSALIE JAMESON	)	
Claimant	)	
VS.	)	
	)	
NATIONWIDE LEARNING RESOURCE, INC.	)	Docket No. 1,004,215
Respondent	)	
	)	
and	)	
	)	
AMERICAN FAMILY MUTUAL INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the September 17, 2002 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a February 4, 2002 hip injury that occurred after claimant had finished work and was walking to her car. Following a preliminary hearing on February 16, 2002, Judge Avery awarded claimant medical and temporary disability benefits.

Respondent and its insurance carrier contend the Administrative Law Judge (ALJ) erred by finding that claimant's accident arose out of and in the course of her employment with the respondent because claimant's slip and fall injury did not occur on respondent's premises and respondent had no responsibility to remove the ice and snow from where claimant's accident occurred. Respondent and its insurance carrier argue that the accident was not associated with claimant's employment and it did not occur while claimant was engaged in employment activities. They contend, therefore, the accident is not compensable under the Workers Compensation Act.

It is not disputed that the area where claimant fell had not been cleared and was covered by ice and snow. What is disputed is whether that area constituted the premises of the respondent or if the respondent otherwise had any duty to see that the ice and snow was cleared, either by respondent itself or to ensure that it was done by the landlord. Thus, the only issue before the Appeals Board (Board) on this appeal is whether claimant's accident arose out of and in the course of her employment with the respondent.

FINDINGS OF FACT

After reviewing the record compiled to date, the Board finds:

1. On February 4, 2002, Rosalie Jameson slipped and fell on ice outside the door of the building where she worked. At the time of the accident Ms. Jameson had finished her work shift and had exited the rear door of the building. She used this door because it was by the time clock nearest to where she worked and also because her car was parked in the lot behind the building. Claimant had taken about two steps beyond the building when she slipped on ice and snow that had been there for at least a day or two.

2. Respondent leased the part of the building where Ms. Jameson worked. Although the lease agreement is silent in this regard, respondent and its landlord deny that respondent was responsible for the removal of ice and snow from the paved sidewalks, roadways or parking lot. The lease does provide, however, that respondent is responsible for the removal of trash and rubbish on the premises, and that the landlord is responsible for mowing the grass and maintenance of the landscaping.

3. The building is occupied by tenants other than respondent and those tenants also use the four parking lots leased for use by respondent's employees and visitors.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.

2. An injury is compensable under the Workers Compensation Act if it arises out of and in the course of employment. [1] The Act addresses "arising out of and in the course of employment" in the following "going and coming" rule. [2]

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[1] K.S.A. 44-501(a); *See Chapman v. Victory Sand & Stone Co.*, 197 Kan. 377, 382-383, 416 P.2d 754 (1966).

[2] K.S.A. 44-501(f); *See Chapman v. Beech Aircraft Corp.*, 258 Kan. 653, 907 P.2d 828 (1995).

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, **the proximate cause of which injury is not the employer's negligence.** An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. (emphasis added)

3. The Workers Compensation Act is to be liberally construed to bring both employers and employees within its provisions affording them the protections of the Act. [3]

4. When construing statutes, legislative intent is to be determined by considering the entire act. If possible, effect must be given to every part of the Act. As far as practicable, the different provisions of the Act should be construed to make them consistent, harmonious, and sensible. [4]

5. As a general rule, statutes should be construed to avoid unreasonable results. There exists a presumption that the legislature does not intend to enact useless or meaningless law. [5]

6. Respondent argues that claimant is not entitled to benefits in this matter based on the "coming and going" rule. The plain and unambiguous language of the statute exempts injuries caused by an employer's negligence from this rule. Thus, the question becomes whether respondent was negligent by failing to clear the pathways and parking lot outside its business premises. If respondent breached a duty owed claimant, then respondent is responsible for claimant's resultant injuries.

7. Respondent argues that it did not breach a duty owed claimant when it failed to clear the parking lot on the date of accident because that duty was actually respondent's landlord's duty pursuant to the terms of respondent's lease. In a case where a similar argument was made, the Alaska Supreme Court said:

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[3] K.S.A. 44-501(g).

[4] *KPERS v. Reimer & Koger Assoc.'s Inc.*, 262 Kan. 635, 941 P.2d 1321 (1997).

[5] *KPERS* at 643.

> But this argument is unconvincing for several reasons. The lease provision requiring CIRI to be primarily responsible for clearing ice implicitly vested Holland America with a right to insist that CIRI comply with its contractual obligation; Holland America actually did request CIRI to take action on several occasions. In a very real sense, then, Holland America retained and actually undertook to exercise control over the condition of its sidewalk. Moreover, while Holland America could delegate contractually to CIRI the job of keeping the sidewalk free of ice and snow, its delegation of performance did not necessarily relieve it of its legal duty to perform. [6]

8. On the date of accident, claimant was respondent's business invitee, a person entering respondent's business for the purpose of a common interest or mutual advantage[7] ". . . and thereby falls within the class of persons to whom the owner or lessor of the premises owes a duty." [8] As a result, respondent owed a duty to claimant to exercise reasonable care under all the circumstances. [9] In addition, as an employer, respondent had a duty not to expose its employee to perils and dangers against which the employer could guard by the exercise of reasonable care. [10]

9. Respondent breached its duties by failing, regardless of the lease, to clear the parking lot or ensure that it was done by the landlord within a reasonable time after the winter storm causing the accumulation ended. [11]

10. The Board agrees with the ALJ and finds that Ms. Jameson's accident arose out of and in the course of employment because the employer was negligent in failing to ensure a safe path from the door closest to the rear time clock to the parking lot provided for the

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[6] *Seville v. Holland America Line Westours, Inc.,* 977 P.2d 103, 111 (Alaska 1999).

[7] *See Morris v. Krauszer's Food Stores, Inc.*, 300 N.J. Super. 529, 535, 693 A.2d 510 (App. Div. 1997).

[8] *Nivens v. 7-11 Hoagy's Corner*, 133 Wn. 2d 192, 201, 943 P.2d 286 (1997) (employee is a business invitee on the employer's premises).

[9] *See Jones v. Hansen*, 254 Kan. 499, 867 P.2d 303 (1994).

[10] *Riggs v. Missouri-K*ansas-*Texas Rld. Co.,* 211 Kan. 795, 508 P.2d 850 (1973).

[11] *See Agnew v. Dillon, Inc.*, 16 Kan. App. 2d 298, 822 P.2d 1049 (1991) (business proprietor, absent unusual circumstances, may await the end of a winter storm and a reasonable time thereafter to remove ice and snow from outdoor entrance walks, platforms, or steps because it is impractical to take action earlier).

employees' use. The ALJ also found this accident compensable because Ms. Jameson was injured on respondent's premises. [12] The Board need not reach that issue.

WHEREFORE, the Appeals Board affirms the September 17, 2002 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

IT IS SO ORDERED.

Dated this _____ day of January 2003.

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BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Michael J. Unrein, Attorney for Respondent
Brad E. Avery, Administrative Law Judge
Director, Division of Workers Compensation

[12] *See Thompson v. Law Offices of Alan Joseph*, 256 Kan. 36, 46, 883 P.2d 768 (1994).